

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 378 of 2003

WITH

CIVIL APPLICATION No.7581 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

KIRITKUMAR MOHANLAL JIVRAJANI

Versus

LIFE INSURANCE CORPORATION OF INDIA

Appearance:

MR RK SAVJANI FOR MR AJAY R MEHTA for Petitioner No. 1
MR BAIJU JOSHI FOR MR HM BHAGAT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 10/02/2004

ORAL JUDGEMENT

1. This appeal has been preferred by the original-plaintiff against the order dated 18th September 2003 made by the Court of Civil Judge (SD), Gondal below Misc. Civil Application No.5 of 2003 seeking restoration of Special Civil Suit No.378 of 1994. Heard Mr.R.K.Savjani on behalf of the appellant and Mr.Baiju Joshi for Mr.H.M.Bhagat on behalf of the respondent, original defendant.

2. It appears that the Trial Court dismissed the suit on 16th January 2003 as the plaintiff was not present on the said day. The plaintiff moved an application on 10th February 2003 and sought restoration of the suit. The case of the plaintiff was that as another suit preferred by his mother was also pending, an application for consolidation of both the suits before one court was moved and the plaintiff was waiting the outcome of the said application and hence, there was lapse on the part of the plaintiff.

3. In the aforesaid fact situation, it is apparent that the plaintiff has remained absent when the suit was to be proceeded with out of a misconception in relation to the legal position. Though it is settled in law that merely moving of an application for transfer of case cannot be a sufficient ground for remaining absent, on the peculiar facts and circumstances of the case, when the plaintiff has filed the suit seeking discharge of policy of his deceased brother, it would be in the interest of justice if the suit is restored to file subject to following conditions:

(i) The plaintiff shall not seek any adjournment henceforth and shall proceed with the hearing of the suit on the day and at the time fixed by the Trial Court. Any lapse on this count at the hands of the plaintiff would render the plaintiff liable to the suit being dismissed by the Trial Court for non-prosecution. Mr.Savjani accepts this condition on behalf of the plaintiff and undertakes to abide by the same.

4. This appeal is, therefore, allowed to the aforesaid extent. The appellant-plaintiff shall pay cost of this appeal to the respondent Life Insurance Corporation of India. The cost is quantified at Rs.1,000/=.

5. In light of the above, the Civil Application is disposed of as having become infructuous.

(D.A.Mehta, J.)

(vjn)